

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1168 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

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JOGINDERSINH @ PINTOO

RAMESHWARWINH RAJPUT

Versus

COMMISSIONER OF POLICE

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Appearance:

MR ASIM J PANDYA for Petitioner

MR KT DAVE AGP for Respondent No. 1, 2, 3

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CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 13/10/1999

ORAL JUDGEMENT

1. Heard the learned advocate Mr. Asim Pandya for the petitioner and learned AGP Mr. K.T. Dave for respondent nos. 1, 2 and 3. The detention order dated 22.12.98 passed by respondent no.1 - Commissioner of Police, Ahmedabad against the petitioner in exercise of power conferred under section 3 (1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ( PASA for short) is challenged in the present petition filed under

Article 226 of the Constitution of India.

2. The grounds of detention supplied to the petitioner, copy of which is produced at Annexure : C inter alia disclose that the petitioner is involved in 27 cases registered at different Police Stations in the city of Ahmedabad in between 12th February, 1998 to 21st August, 1998 for the offences made punishable under sections 392, 394, 379 and 307 of I.P.C. The said offences are registered on information of chain snatching or theft of the two-wheeler. That during the investigation, the Investigating Officer had arrested the petitioner on the basis of the statements of witnesses. Furthermore, two witnesses on assurance of anonymity have supplied information against the petitioner. One of the witnesses has stated about the incident dated 15.8.98 accordingly, that the petitioner had gone to the shop of witness with a golden chain and claimed Rs. 5,000/- on the security of the said chain. The witness having suspected that the chain might be a stolen property refused and as such, the petitioner got enraged, assaulted the witness, dragged him to the road and started beating him. On alarm raised by the witness, passers-by gathered there and the petitioner having rushed to them, they dispersed. The other witness has stated about the incident dated 17.8.98. According to the said witness, the petitioner came to his house around 5.00 p.m. in the evening on a motor cycle and requested the witness to keep the bag given by him. On refusal by the witness, the petitioner got enraged, dragged the witness from his house to a public road and started beating him. On account of the hubbub, the passers-by gathered there, but the petitioner rushed to them with open knife and as such, people had dispersed.

3. On the basis of the above-stated material, respondent no.1 has come to a conclusion that the petitioner is a "dangerous person" within the meaning of section 2 (c) of the PASA. That the petitioner is released on bail in cases registered at item nos. 14 to 19 in the grounds of detention. However, the petitioner is in judicial custody in respect to the case registered and shown at item no. 19. The grounds indicate that the detaining authority considered the fact that the petitioner is likely to be released in the case registered vide CR No. 376/98 for the offence made punishable under sections 392 and 307 of I.P.C. and after getting released on bail, the petitioner is likely to continue his anti-social activity. That enforcement of general provisions of law are insufficient to prevent the petitioner from continuing his anti-social activity

and as such, the impugned order has been passed.

4. The petitioner has challenged the impugned order on numerous grounds. It has been submitted on behalf of the petitioner that so far as the criminal cases registered against the petitioner are concerned, they are in between 12th February, 1998 to 21st August, 1998. That the incidents disclosed by the anonymous witnesses are also dated 15.8.98 and 17.8.98. However, the detaining authority has passed the impugned order on 22.12.98 without disclosing any explanation in the grounds of detention for delayed action. As such, in the absence of live link between the alleged criminal activity and the impugned action taken against the petitioner, the subjective satisfaction formed by the detaining authority while passing the impugned order has been vitiated on account of non-application of mind and as such, the impugned order is bad.

5. It is also submitted on behalf of the petitioner that the detaining authority-respondent no.1 has failed to consider the aspect of lesser drastic remedy like opposing the bail application or cancellation of bail under section 437 (5) of Cr.P.C. That though the petitioner was in judicial custody, the detaining authority has passed impugned order without considering such aspect and as such, the subjective satisfaction having been vitiated, the order is bad in law.

6. On scrutiny of facts, it appears that the detaining authority has not explained regarding delayed action from 21.8.98 till the date of the impugned order i.e. dated 22.12.98. Furthermore, though the detaining authority has recorded the fact that the petitioner is in judicial custody and has applied for bail, the grounds of detention do not disclose that the detaining authority had considered the aspect of opposing the bail or praying for cancellation of bail granted in other cases registered against the petitioner on the ground of alleged repeated activity. It may be noted that this Court has accepted the proposition of law in various matters and Letters Patent Appeal that non-consideration of aspect for cancellation of bail under section 437(5) of Cr.P.C. as lesser drastic remedy by the detaining authority discloses non-application of mind as well as the fact vitiating the subjective satisfaction of the detaining authority while passing the impugned order which renders the impugned order illegal. In the instant case, the facts as discussed hereinabove clearly state that the impugned order suffers from the vice of non-application of mind as well as the subjective

satisfaction which appears to have been vitiated due to non-consideration of lesser drastic remedy though available. Hence, the petition is required to be allowed.

7. As the petition succeeds on the above-stated ground, it is not necessary to consider and decide the other contentions raised in the petition.

8. On the basis of the aforesaid ground, the petition is allowed. The impugned order dated 22.12.98 passed by respondent no.1 against the petitioner is hereby quashed and set aside. The petitioner Jogindersinh @ Pintoo Rameshwarsinh Rajput is ordered to be set at liberty forthwith, if not required in any other case. Rule to that extent is made absolute.

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